

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine Matejcek	Team: Squad #1	CCRB Case #: 201705029	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/12/2017 1:02 PM	Location of Incident: § 87(2)(b)	Precinct: 67	18 Mo. SOL 12/12/2018	EO SOL 12/12/2018	
Date/Time CV Reported Thu, 06/15/2017 5:35 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 06/21/2017 11:34 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Villafane	01275	940837	067 PCT
2. POM Michael Becker	117	954892	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Brian Schulman	02429	939435	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Becker	Abuse: Police Officer Michael Becker questioned § 87(2)(b)	
B.POM Michael Becker	Abuse: Police Officer Michael Becker questioned § 87(2)(b) and individuals.	
C.POM Jose Villafane	Abuse: Police Officer Jose Villafane questioned § 87(2)(b)	
D.POM Jose Villafane	Abuse: Police Officer Jose Villafane questioned § 87(2)(b) and individuals.	
E.POM Michael Becker	Abuse: Police Officer Michael Becker stopped § 87(2)(b)	
F.POM Michael Becker	Abuse: Police Officer Michael Becker frisked § 87(2)(b)	
G.POM Michael Becker	Abuse: Police Officer Michael Becker searched § 87(2)(b)	
H.POM Michael Becker	Abuse: Police Officer Michael Becker stopped individuals.	
I.POM Michael Becker	Abuse: Police Officer Michael Becker frisked individuals.	
J.POM Jose Villafane	Abuse: Police Officer Jose Villafane stopped individuals.	
K.POM Jose Villafane	Abuse: Police Officer Jose Villafane frisked individuals.	
L.POM Michael Becker	Abuse: Police Officer Michael Becker questioned § 87(2)(b)	
M.POM Michael Becker	Abuse: Police Officer Michael Becker threatened § 87(2)(b) with the use of force.	
N.POM Michael Becker	Discourtesy: Police Officer Michael Becker spoke discourteously to § 87(2)(b)	
O.POM Michael Becker	Discourtesy: Police Officer Michael Becker acted discourteously toward § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
P.POM Michael Becker	Abuse: Police Officer Michael Becker refused to provide his name and shield number to § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

Case Summary

On June 15, 2017, § 87(2)(b) filed this complaint in person at the 67th Precinct stationhouse [01 Board Review]. It was received at the CCRB on June 21, 2017.

At approximately 1:02 p.m. on June 12, 2017, § 87(2)(b) was walking past § 87(2)(b) in Brooklyn when his friend, known to § 87(2)(b) as “§ 87(2)(b)” but identified by the investigation as § 87(2)(b) called him over to the building’s interior courtyard. § 87(2)(b) was celebrating his birthday in the courtyard with seven other unidentified males and invited § 87(2)(b) to join them. Per § 87(2)(b)’s account, no one in the group was smoking marijuana, drinking alcohol, or engaging in any other illegal conduct. Shortly after § 87(2)(b) joined the group, PO Michael Becker, PO Jose Villafane, and Sgt. Brian Schulman of the 67th Precinct Anti-Crime team entered the courtyard’s open door. One or two males fled the courtyard and the officers did nothing to stop them. PO Becker and PO Villafane allegedly questioned everyone in the group about whether they had anything in their pockets (**Allegations A, B, C, and D**). PO Becker allegedly stopped, frisked, and searched § 87(2)(b) (**Allegations E, F, and G**). PO Becker and PO Villafane allegedly stopped and frisked some of the other males in the courtyard (**Allegations H, I, J, and K**). As this was going on, PO Becker ran § 87(2)(b)’s ID on his department cell phone and allegedly questioned him about whether he had any weapons charges on his record (**Allegation L**). When § 87(2)(b) said no, PO Becker allegedly accused him of lying and said “I’m going to smack the shit out of you” (**Allegations M and N**). § 87(2)(b) asked PO Becker for his name and shield number. In response, PO Becker allegedly grabbed his shield from his neck and shoved it in § 87(2)(b)’s face, hitting him on the nose and rendering it impossible for him to read the information (**Allegations O and P**). The officers left the courtyard without making any arrests or issuing any summonses.

A 10 second cell phone video for this incident was obtained from § 87(2)(b) and is linked to IA #28 of the digital case file. The video was recorded by one of the males in the courtyard who could not be identified by this investigation. It does not show any of the allegations. No other video was available for this incident.

This case is being submitted past the 90 day benchmark due to delays in officer scheduling and victim identification. PO Becker’s interview was rescheduled twice, causing a two week delay. During his interview, PO Becker provided information that made it possible to identify § 87(2)(b) as a victim. The undersigned exhausted all contact attempts to § 87(2)(b) before closing the case, which caused an additional delay of approximately three weeks.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation for this case, § 87(2)(b)
- As of September 19, 2017, no Notice of Claim has been filed for this incident [02 Board Review].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint [04 Board Review].
- This is the second CCRB complaint involving § 87(2)(b) § 87(2)(b) § 87(2)(b)
- PO Becker has been a member of the NYPD for four years. This is the second CCRB case filed against him. The first, #201600251, contained a discourtesy allegation and a stop allegation that were closed as unsubstantiated and exonerated. A third case, #201705417, is currently under investigation and contains allegations of a stop, a search, a frisk, and a refusal to provide name and shield number. PO Becker has no substantiated allegations on his record [04 Board Review].
- PO Villafane has been a member of the NYPD for 11 years. This is the eighth CCRB case filed against him. #201007838 contained a stop allegation but was closed as complainant unavailable. PO Villafane has no substantiated allegations on his record [04 Board Review].

Potential Issues

- The undersigned exhausted the requisite contact attempts to § 87(2)(b) but was not able to reach him for a statement.
- Seven of the nine victims in this case could not be identified by the investigation.

Findings and Recommendations

Allegations Not Pleaded:

- Abuse of Authority: PO Villafane testified that he questioned, frisked, and searched § 87(2)(b) § 87(2)(b) did not make any such allegations against PO Villafane, § 87(2)(g) § 87(2)(g)

Allegation A – Abuse of Authority: Police Officer Michael Becker questioned § 87(2)(b)

Allegation B – Abuse of Authority: Police Officer Michael Becker questioned § 87(2)(b) and individuals.

Allegation C – Abuse of Authority: Police Officer Jose Villafane questioned § 87(2)(b)

Allegation D – Abuse of Authority: Police Officer Jose Villafane questioned § 87(2)(b) and individuals.

Allegation E – Abuse of Authority: Police Officer Michael Becker stopped § 87(2)(b)

Allegation F – Abuse of Authority: Police Officer Michael Becker frisked § 87(2)(b)

Allegation G – Abuse of Authority: Police Officer Michael Becker searched § 87(2)(b)

Allegation H – Abuse of Authority: Police Officer Michael Becker stopped individuals.

Allegation I – Abuse of Authority: Police Officer Michael Becker frisked individuals.

Allegation J – Abuse of Authority: Police Officer Jose Villafane stopped individuals.

Allegation K – Abuse of Authority: Police Officer Jose Villafane frisked individuals.

Allegation L – Abuse of Authority: Police Officer Michael Becker questioned § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) testified that he was walking east on Nostrand Avenue when § 87(2)(b) called him into the courtyard at § 87(2)(b) § 87(2)(b) stated that anyone standing in the courtyard would be

visible from the sidewalk [09 Board Review]. The door to the courtyard, along with a large area surrounding it, is made of a material similar to a chain-link fence. § 87(2)(b) was in the courtyard with seven other males. § 87(2)(b) stated that the men were gathered for § 87(2)(b)'s birthday, but denied that anyone was drinking alcohol or smoking marijuana at the time. § 87(2)(b) also denied that any of the males were engaged in violent conduct. Five to ten minutes after § 87(2)(b) entered the courtyard, PO Becker, PO Villafane, and PO Schulman entered the courtyard. § 87(2)(b) provided differentiating descriptions of the officers, demonstrating that he knew the difference between PO Becker and PO Villafane. In addition to providing part of PO Villafane's shield number, § 87(2)(b) described him as a Hispanic male in his 30s or 40s standing 5'9" tall. In contrast, he described the officer later identified as PO Becker to be a white male in his mid-20s standing 6'2" tall. PO Becker and PO Villafane asked if anyone in the group had anything in their pockets. While most members of the group were calm and compliant, one male left the courtyard and entered the apartment building immediately after seeing the officers. No one tried to stop him. In response, PO Becker allegedly said "Everybody's gonna get searched for that." At the time, § 87(2)(b) was carrying condoms, a cell phone, and a small vial of cologne in his front pants pockets and his wallet in one of his rear pants pockets. PO Becker allegedly frisked § 87(2)(b)'s front pockets and entered § 87(2)(b)'s back pockets. He did not remove any items. He then asked § 87(2)(b) for his ID. § 87(2)(b) took out his ID and handed it to PO Becker without incident. After obtaining § 87(2)(b)'s ID, PO Becker and PO Villafane frisked roughly five other members of the group. As this was going on, PO Becker ran a check on § 87(2)(b)'s ID using his cell phone. PO Becker returned § 87(2)(b)'s ID and allegedly questioned him about whether he had any weapons charges on his record. As this was going on, Sgt. Schulman stood several feet away and silently observed.

PO Becker testified that he and his partners were working regular anti-crime overtime on the date in question. They were not addressing any specific condition on that date. PO Becker stated that, although § 87(2)(b) is in a high-crime area, he was not familiar with that specific building as a location known for criminal activity. The officers were driving on Nostrand Avenue when they observed that the door to the courtyard of § 87(2)(b) was propped open. Through the open door, the officers saw that there were nine males gathered in the building's interior courtyard. Based on the size of the group, the officers agreed that they should pull over and approach the courtyard on foot to see what was going on. PO Becker stated that no other factors contributed to the officers' decision to approach the courtyard. None of the males were engaging in any sort of violent conduct, and PO Becker did not see any alcohol bottles or smell marijuana prior to entering the courtyard. When asked why his memo book used the phrase "unlawful assembly," PO Becker explained that the possibility of unlawful assembly was a factor contributing to the officers' decision to approach. However, he did not have a specific suspicion that the males in the courtyard were guilty of unlawful assembly. After entering the courtyard, PO Becker saw two males run away into the adjacent building. The officers did not chase after the males or make any effort to determine why they had fled. PO Becker noticed that there were several liquor bottles on the floor. He did not recall the condition of the bottles and did not see any of the males drinking anything. PO Becker noted that, after entering the courtyard, he smelled marijuana. He could not describe whether the odor was burnt or vegetative and stated that he did not have a specific suspicion that the males in the courtyard had been smoking or that the odor was coming from the courtyard itself. Based on the alcohol bottles, the smell of marijuana, and the fact that the two males fled, the officers questioned the men in the courtyard about what they were doing. PO Becker did not specifically recall which officers were asking these questions or what specifically was asked. One of the males stepped forward and explained that the group was gathered to celebrate this birthday. PO Becker recognized this man as § 87(2)(b) who

he had arrested in the past year and has a friendly relationship with. § 87(2)(b) showed PO Becker his ID to prove that it was his birthday and the two of them struck up a friendly conversation. As PO Becker chatted with § 87(2)(b) one of the men in the group began to curse at the officers, raise his voice, and pace back and forth in an aggressive manner. PO Becker viewed a photograph of § 87(2)(b) but stated that he did not recall whether he was the aggressive male in question. PO Becker suspected that this male was intoxicated because he was also slurring his speech. PO Villafane spoke to the aggressive male in an attempt to deescalate the situation. The other males calmly watched the incident unfold and did not do anything that was a cause for concern. From that point forward, PO Becker did not know what PO Villafane or Sgt. Schulman did on scene because he was focused on catching up with § 87(2)(b). PO Becker did not recall whether he requested anyone's identification and did not recall whether he was ever in possession of anyone's identification. He did not recall whether he asked any of the males on scene if they had weapons charges on their record. PO Becker did not observe any bulges on any of the males, never suspected that any of them had weapons, and did not take any actions to determine whether any of the males on scene were responsible for the odor of marijuana in the courtyard. He did not recall whether he or PO Villafane frisked or searched anyone.

PO Villafane testified that § 87(2)(b) is a known gang location where he previously recovered two firearms. The address is located on a stretch of Nostrand Avenue that is part of a specific shooting condition that the officers were addressing on the date in question. At the time of the incident, PO Villafane was driving the RMP on Nostrand Avenue when he noticed that the door to § 87(2)(b) was propped open. Inside, he saw a group of roughly 20 males. Based on the location's history, the fact that the door was propped open, and the size of the group in the courtyard, PO Villafane decided that the officers should pull over and investigate further. PO Villafane explained that his intention was to recover a gun from the courtyard. No other factors contributed to PO Villafane's decision to approach the courtyard and stop the males. Like PO Becker, PO Villafane testified that he smelled marijuana after entering the courtyard. This smell led PO Villafane to suspect that someone had been smoking immediately prior to the officers' arrival. PO Villafane also saw two males run into the building as soon as the officers arrived. When these males fled, the smell of marijuana became very faint, so PO Villafane suspected that they were probably responsible for the smell. PO Villafane also noticed several empty bottles of Patron on the floor. Unlike PO Becker, PO Villafane believed that the men were drinking because he saw a few of them holding plastic cups filled with what appeared to be fruit punch. PO Villafane recognized three of the males in the courtyard as known gang members who he had previously arrested or helped to arrest. PO Villafane asked the group what they were doing, and § 87(2)(b) explained that it was his birthday. Although most of the males were calm and cooperative, two of them became aggressive and asked the officers "What the fuck are you doing here?" PO Villafane viewed a photograph of § 87(2)(b) and identified him as one of the aggressive males. PO Villafane stated that these males never did anything physically threatening to the officers and only showed their aggression by cursing and raising their voices. PO Villafane also noticed that three of the males in the crowd had large bulges in their pants pockets. Based on the bulges, the two aggressive males, the history of the location, and the known gang affiliations of some of the men in the crowd, PO Villafane suspected that they might have been conducting a gang initiation rather than celebrating a birthday. After speaking with the group as a whole for five minutes, PO Villafane, PO Becker, and Sgt. Schulman split up and started speaking individually with each member of the group. From this point forward, PO Villafane's back was turned to his partners and he was not focused on what they were doing. However, he overheard PO Becker and Sgt. Schulman requesting IDs. PO Villafane did not know whether PO Becker frisked or searched anyone on scene, but stated that he "hoped" he had done so because it would have been procedurally advisable

given the circumstances. As this was going on, PO Villafane spoke with § 87(2)(b) and two other males, all of whom had bulges in their pants pockets. He did not recall the specific location of the bulges on each person. He stated that he had no suspicion whatsoever as to what the bulges might have been and did not suspect that the men had weapons. Regardless, he asked all three males for their IDs and questioned them about whether they had any weapons in their pockets. Each male provided his ID without incident and denied having any weapons. When PO Villafane ran § 87(2)(b)'s ID, he noticed that he had weapons charges on his record, so he asked § 87(2)(b) how his most recent arrest worked out for him. § 87(2)(b) stated that he was still dealing with the matter in court. PO Villafane then frisked the front pants pockets of all three males with negative results. PO Villafane noticed a large bulge in the rear pants pocket of one of the males, so he reached into the pocket and removed a 6" bottle of cologne. The undersigned showed PO Villafane a photo of the cologne that § 87(2)(b) alleged was removed from his pocket by an officer, but PO Villafane stated that this was not the same bottle. PO Villafane did not recall if he entered any other pockets on the males, but stated that he eventually came to learn that the bulges in their pockets were comprised of cell phones, condoms, and cards. Following the frisk, one of the males voluntarily removed multiple cell phones from his pockets. PO Villafane did not recall how he came to learn about the contents of the other males' pockets.

Sgt. Schulman testified that he and his partners were working spike overtime to address gang violence in the precinct. This condition was not linked to any specific location or incident and was not written down anywhere. Like PO Villafane, Sgt. Schulman noted that § 87(2)(b) is a known gang location that officers from the 67th Precinct respond to on nearly a daily basis. For this reason, when he and his partners left the stationhouse, they were already intending to stop at that location due to its history. Sgt. Schulman did not recall making any observations about activity inside the courtyard from the street before pulling over and approaching on foot and stated that there was no specific reason why the officers entered the courtyard on the date in question. Sgt. Schulman also wrote "9 males stopped unlawful assembly" in his memo book, but explained that the possibility of unlawful assembly did not become a factor until after the officers had already entered the courtyard and started speaking with the males. After entering the courtyard, Sgt. Schulman and his partners happened upon a group of nine males socializing calmly. Sgt. Schulman did not recall smelling marijuana or seeing any signs that the men were drinking alcohol. He made no mention of two males running out of the courtyard when the officers approached. Like his partners, Sgt. Schulman testified that one male became aggressive as soon as the officers entered the courtyard by clenching his fists, speaking in an angry tone of voice, and gesticulating wildly. This male did not make any physical threats towards the officers. Sgt. Schulman viewed a photograph of § 87(2)(b) but did not recall if he was the aggressive male in question. As soon as that male became aggressive, Sgt. Schulman and his partners separated the males into smaller groups to talk with them. Sgt. Schulman did not recall what he discussed with the men he spoke with, but stated that the conversation was calm and normal. He did not recall whether he or his partners questioned the males about what they were doing, whether they had anything in their pockets, or whether they had a history of weapons charges. He did not recall whether he requested anyone's ID and did not recall whether his partners did so. Sgt. Schulman did not recall whether he observed bulges on any of the males in the courtyard and did not recall whether PO Becker or PO Villafane frisked or searched anyone.

None of the officers made any mention of the smell of marijuana or the presence of alcohol bottles in their memo books. A warrant audit check revealed a check of § 87(2)(b)'s ID by PO Becker's tax number on the date of the incident. No stop and frisk reports were created for the incident (Board Review 11).

Officers may request information from citizens (a “level one” interaction) when there is some when there is some objective, credible reason for that interference not necessarily indicative of criminality. To ask more ‘pointed’ questions (a “level two” interaction), officers must have a founded suspicion that criminality is afoot (*People v. De Bour*, 40 N.Y.2d 201 (1976)) [05 Board Review]. Requesting identification or asking an individual whether he has “any weapons, anything on you you’re not supposed to have” is permissible under a level two inquiry (*People v. Rodriguez*, 81 A.D.3d 404 (2011)) [06 Board Review]. An officer may stop a person when he reasonably suspects that such a person is committing, has committed, or is about to commit a crime. An interaction constitutes a stop when a reasonable person would believe, under the circumstances, that the officer’s conduct is a significant limitation on his or her freedom (*People v. Bora*, 83 N.Y.2d 531 (1994)) [07 Board Review]. A frisk is permissible only if an officer possesses a particularized, reasonable suspicion that a suspect is armed (*People v. Gonzalez*, 295 A.D.2d 183 (2002)) [08 Board Review]. An indiscernible pocket bulge is insufficient to justify a frisk (*People v. Wiley*, 488 N.Y.S.2d 380 (1985)) [Board Review].

§ 87(2)(g)

§ 87(2)(g)

PO Villafane admitted to frisking (and therefore stopping) some of the males in the courtyard as alleged. Although he testified to noticing bulges in their pockets before frisking them, PO Villafane could not describe what the bulges looked like. § 87(2)(g)

§ 87(2)(g)

PO Becker ran a warrant check for § 87(2)(b) but did not recall doing so. None of the officers on scene recalled whether PO Becker questioned § 87(2)(b) but PO Villafane testified that he questioned § 87(2)(b) about a weapons charge on his record. § 87(2)(b)

§ 87(2)(g)

Allegation M – Abuse of Authority: Police Officer Michael Becker threatened § 87(2)(b) with the use of force.

Allegation N – Discourtesy: Police Officer Michael Becker spoke discourteously to § 87(2)(b)

Allegation O – Discourtesy: Police Officer Michael Becker acted discourteously toward § 87(2)(b)

Allegation P – Abuse of Authority: Police Officer Michael Becker refused to provide his name and shield number to § 87(2)(b)

When § 87(2)(b) denied having weapons charges on his record, PO Becker accused him of lying and allegedly said “I’m going to smack the shit out of you.” PO Becker allegedly lunged toward § 87(2)(b) but was held back by § 87(2)(b) and PO Villafane. § 87(2)(b) asked PO Becker to identify himself. In response, PO Becker allegedly took his shield from his neck and shoved it in § 87(2)(b)’s face, hitting him on the nose. § 87(2)(b) was not able to read PO Becker’s name or shield number. PO Villafane then voluntarily provided § 87(2)(b) with his name and shield number.

PO Becker testified that he never got into an argument with anyone on scene, including the unidentified male who was acting aggressively. There was never a point at which anyone on scene threatened violence or seemed like they were a risk of becoming violent. PO Becker denied saying “I’m going to smack the shit out of you,” using profanity, or threatening the use of force in any context. PO Becker did not recall whether any civilian ever requested his name and shield number, but denied refusing to provide this information or shoving his shield in anyone’s face. As PO Villafane attempted to deescalate the situation by speaking with the aggressive male, PO Becker overheard the male ask for PO Villafane’s name and shield number. PO Villafane provided this information without incident. After the officers had been on scene for approximately five minutes, it became clear that the aggressive male was not going to calm down and that they should leave before the situation escalated any further. The officers used their discretion to not issue any summonses to the males on scene because it was § 87(2)(b)’s birthday. PO Becker’s memo book noted that the aggressive male was “warned and admonished.” When asked how, PO Becker stated that he was told to calm down and nothing more.

PO Villafane corroborated PO Becker’s testimony and denied that the alleged misconduct occurred.

Sgt. Schulman did not specifically recall how officers dealt with the aggressive male’s behavior. He did not recall whether PO Becker said “I’m going to smack the shit out of you,” used profanity, or threatened the use of force in any context. He did not recall whether any civilian requested an officer’s name or shield number and did not recall hearing any officer refuse to provide this information. He did not see PO Becker shove his shield in anyone’s face and did not hear any complaints that something like this had occurred. Sgt. Schulman stated that the officers never issued any summonses because their main objective in entering the vestibule was just to check the area and was never specifically related to the males gathered there.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Squad: 1

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date